

FILED

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

2014 APR 25 P 4:48

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

**MIDDLEBURG VOLUNTEER
FIRE DEPARTMENT, INC.**

Plaintiff,

v.

MCNEIL & COMPANY, INC., et al.,

Defendants.

Case No. 1:14CV458

TSE / ZDD
Loudoun County Circuit Court

Case No. 107CL00086955-00

**DEFENDANTS McNEIL & COMPANY, INC. AND ARCH INSURANCE
COMPANY'S NOTICE OF REMOVAL**

COME NOW Defendants McNeil & Company, Inc. ("McNeil") and Arch Insurance Co. ("Arch"), by counsel, and submit the following Notice of Removal of this case from the Circuit Court for Loudoun County, Virginia to the United States District Court for the Eastern District of Virginia, Alexandria Division, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.¹

I. *Introduction.*

1. This matter is an insurance coverage action filed by Middleburg Volunteer Fire Department, Inc. ("Middleburg") against McNeil and Arch asserting a claim for breach of contract. In this matter, Arch issued an insurance policy to Middleburg, Policy No. MEPK07344305, that included a "Commercial Crime Coverage Form." (Ex. 3 to Compl., Ex. A.) It is this "Commercial Crime Coverage Form" that forms the basis of the coverage dispute between Middleburg and the defendants.

¹ The caption of the complaint incorrectly names Arch as "Arch Insurance Co.," but elsewhere correctly identifies Arch as "Arch Insurance Co."

2. Middleburg is a Virginia corporation with its principal place of business in Virginia, while McNeil is a New York corporation and Arch is a Missouri corporation. McNeil and Arch have their principal places of business in New York and New Jersey respectively.

3. Middleburg filed the complaint on March 31, 2014, in the Circuit Court for Loudoun County, Virginia. (Compl., Ex. A.) The complaint seeks \$200,000 in damages plus prejudgment interest and attorneys fees for alleged bad faith pursuant to Va. Code § 38.2-209. The matter was assigned Case No. 107CL00086955-00 by the Loudoun County, Virginia Circuit Court.

4. Service of process was made on Arch on April 8, 2014. Upon information and belief, service of process has not been made upon McNeil, who consents to waiver of service of process by joining in this Notice of Removal.

5. Pursuant to 28 U.S.C. § 1446(b)(2)(B), “[e]ach defendant shall have 30 days after receipt by or service on that defendant of the initial pleading or summons described in paragraph (1) to file the notice of removal.” Because Arch was served on April 8, 2014, this means that this notice of removal satisfies the timing requirements of 28 U.S.C. § 1446(b)(2)(B).

6. Both Arch and McNeil consent to removal.

II. This Court has subject matter jurisdiction by virtue of diversity jurisdiction pursuant to 28 U.S.C. § 1332.

7. The plaintiff, Middleburg, is a Virginia corporation. (Compl. ¶ 1, Ex. A.) Middleburg’s principal place of business is in Virginia as it “provides fire and emergency medical services to the citizens of the Town of Middleburg, County of Loudoun, Virginia.” (Compl. ¶ 2, Ex. A.)

8. Defendant McNeil is a New York corporation. (Compl. ¶ 3, Ex. A.) McNeil's principal place of business is in New York. McNeil's business includes, among other things, underwriting insurance policies for insurers like Arch.

9. Defendant Arch is a Missouri corporation. (Compl. ¶ 3, Ex. A.) Arch's principal place of business is New Jersey. Arch's business includes, among other things, issuing insurance policies to insureds like Middleburg.²

10. 28 U.S.C. § 1332's amount in controversy threshold requirement is also satisfied as the complaint seeks \$200,000 in damages plus pre-judgment interest and attorney's fees pursuant to Va. Code § 38.2-209.

11. Accordingly, diversity exists under 28 U.S.C. § 1332's as the lawsuit is brought by a Virginia corporation with its principal place of business in Virginia against New York and Missouri corporations who have their principal places of business in New York and New Jersey. Moreover, 28 U.S.C. § 1332's amount in controversy requirement is also satisfied as the complaint seeks in excess of \$75,000.

III. Removal is Proper.

12. As stated above, the Court has subject matter jurisdiction over this claim pursuant to 28 U.S.C. § 1332. Moreover, this notice of removal is timely filed as it is filed within 30 days of service upon Arch and both defendants consent to removal in this matter as evidenced by both defendants' joinder in this notice of removal. Accordingly, this matter is properly removed to this Court pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.

² The instant coverage dispute does not involve a "direct action" that would otherwise defeat diversity under 28 U.S.C. § 1332(c)(1). See *Eltsefon v. State Farm Mut. Auto. Ins. Co.*, 826 F.Supp.2d 922, 924-26 (E.D. Va. 2011)(Ellis, J.).

13. Defendants are simultaneously filing a notice of filing of notice of removal with the Clerk of the Circuit Court for Loudoun County, Virginia.

14. Consistent with the requirements of 28 U.S.C. § 1446, defendants attach “a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.” (State Court File, Ex. B.)

IV. Conclusion.

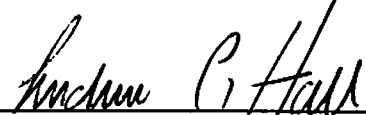
15. Based on the foregoing, defendants respectfully requests the removal of this claim to the United States District Court for the Eastern District of Virginia, Alexandria Division, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, and for such other and further relief as to this Court may seem just and appropriate.

Dated: April 25, 2014

Respectfully submitted,

**MCNEIL & COMPANY, INC. and
ARCH INSURANCE COMPANY
By Counsel**

**WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER, LLP**

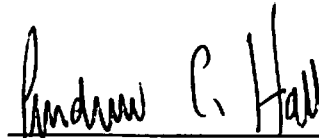


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served on Plaintiff this 25th day of April 2014 by U.S. Mail, First Class, Postage Prepaid, to:

Jon F. Mains, Esquire
10511 Judicial Drive, Suite 107
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